

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

v.

KYE RUE

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CRIMINAL ACTION NO. H-15-266

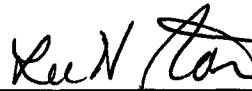
**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION AND
DENYING DEFENDANT'S MOTION TO DISMISS THE INDICTMENT**

This court has reviewed the Memorandum and Recommendation of the United States Magistrate Judge signed on July 29, 2015, and has made a *de novo* determination of the Magistrate Judge's recommended disposition. Rule 72(b), Fed. R. Civ. P.; 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989). This court finds that the Memorandum and Recommendation should be, and is, adopted as this court's Memorandum and Order. The defendant moved to dismiss the indictment on the ground that the armed robberies alleged to violate the Hobbs Act, 18 U.S.C. § 1951(a), did not sufficiently impact interstate commerce to satisfy constitutional and jurisdictional requirements. (Docket Entry No. 62). His facial challenge to the constitutionality of the Hobbs Act are foreclosed by Fifth Circuit precedent, *see United States v. Robinson*, 119 F.3d 1205, 1212 (5th Cir. 1997), and his as-applied challenge is foreclosed by the specific allegations in the indictment, which are sufficient to satisfy the jurisdictional requirements defined by the Hobbs Act and applicable Fifth Circuit authority. *See United States v.*

Jennings, 195 F.3d 795, 800 (5th Cir. 1999; *United States v. Martinez*, 28 F.3d 444, 445 (5th Cir. 1994).

The motion to dismiss the indictment is denied.

SIGNED on August 20, 2015, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
United States District Judge